



FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

The Committee solicits comment on the following proposal by January 1, 2016. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCrimJI@courts.mi.gov.

PROPOSED

The Committee proposes an instruction where the defendant has been charged with defrauding a vulnerable adult under MCL 750.174a. This instruction is entirely new.

[NEW] M Crim JI 23.17 Defrauding a Vulnerable Adult

(1) The defendant is charged with obtaining or using the money or property of a vulnerable adult through fraud or deceit. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [obtained or used / or tried to obtain or use] [money / property] that belong to [name complainant].

(3) Second, that, at the time, [name complainant] was a vulnerable adult.¹ That means that [name complainant] was:

[Choose appropriate designation and applicable provisions:]

(a) 18 years old or older and was [aged / developmentally disabled / mentally ill / physically disabled]² such that [he / she] required supervision or personal care or lacked personal and social skills required to live independently;

(b) a person placed in an adult foster care home by a state licensed agency.

(c) a person 18 years or older who is suspected of being abused, neglected, or exploited.

(4) Third, that the defendant knew or should have known that [name complainant] was a vulnerable adult.

(5) Fourth, that the defendant [obtained or used / tried to obtain or use] the [money / property] from [name complainant] through [fraud / deceit / misrepresentation / coercion / unjust enrichment].

(6) Fifth, that the [amount of money taken was / the fair market value of the property taken was]

[Choose only one of the following unless instructing on lesser offenses:]

- (a) \$100,000 or more.
- (b) \$50,000 or more but less than \$100,000.
- (c) \$20,000 or more but less than \$50,000.
- (d) \$1,000 or more but less than \$20,000.
- (e) \$200 or more but less than \$1,000.
- (f) some amount less than \$200.

[Use the following paragraph only if applicable:]

(7) [You may add together all money or property obtained or used or attempted to be obtained or used [in a twelve-month period³] when deciding whether the prosecutor has proved the amount required beyond a reasonable doubt.]

(8) Sixth, that the property was taken for the direct benefit of the defendant, or to indirectly benefit [him / her]. An indirect benefit means that the defendant gained some advantage or value other than possession or use of the money or property, itself.

Use Note

¹ The definition of *vulnerable adult* is found in MCL 750.145m(u), whether or not a court has determined that the person is incapacitated. See MCL 750.174a(15)(c).

² The terms “developmental disability” and “mental illness” are referenced in MCL 750.145m(d) and (i), respectively. *Development disability* is defined in MCL 330.1100a(25); *mental illness* is defined in MCL 330.1400(g).

³ This time limitation only applies if the defendant’s scheme or conduct was directed against more than one person. MCL 750.174a(8).

Staff Comment

The statute does not define the terms *fraud*, *deceit*, *misrepresentation*, *coercion*, or *unjust enrichment*. Where the jury has a question about the meaning of terms, a party requests a definition, or the court decides that providing a definition is appropriate, the Committee suggests the following (but the court may opt to use other definitions). *Fraud* means using falsehoods, trickery or concealment to mislead someone in order to cause or induce that person to perform an act or not to act. *Deceit* means doing something to give a false impression in order to cause or induce someone to perform an act or not to act. *Misrepresentation* means a false or misleading statement. *Coercion* means inducing another person to act against his or her will by the use of physical force, intimidation, threats or some other form of pressure. *Unjust enrichment* requires the receipt of a benefit by the defendant from the victim and an

inequity resulting to the victim because of the retention of the benefit by the defendant. *Karaus v Bank of New York Mellon*, 300 Mich App 9 (2012).

Reference Guide

Statutes

MCL 750.174a